IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.878 OF 2006

Dhanraj Mathu Gaikwad ...Appellant

Versus

The State of Maharashtra & Ors. ...Respondents

Shri G.S.Godbole for the Appellant.
Shri Rahul Matkari i/by Shri V.Z.Kankaria for the Respondent No.3.

CORAM : ABHAY S.OKA, J.
DATED : JULY 10, 2007.

P.C.:

1. Heard the learned Advocate for the Appellant and the learned Advocate for the third Respondent. The Appellant is the original Plaintiff and the Respondents are the original Defendants.

2. The case of the Appellant is that the third Respondent was to start a video parlour without his consent in the suit premises admeasuring 20ft X 12ft. According to the case of the Appellant, the father of the third Respondent was the tenant in respect of the suit premises and after his demise, the third Respondent's brother Haniffudin became a tenant in respect of the suit premises by consent of all the legal representatives of the deceased father of the third Respondent. The case of the Appellant-Plaintiff is that

the first and second Respondents were trying to grant a license to the third Respondent for running a video parlour in the suit premises. It was contended that under the relevant Rules, the license cannot be granted to the third Respondent for various reasons including the fact that the Appellant had never consented. Therefore, the Appellant -Plaintiff filed a suit for injunction restraining the first and second Respondents from granting a license to the third Respondent to run video parlour. The suit was dismissed by the trial Court. While dismissing the suit, the trial Court held that the third Respondent alongwith Haniffudin were the joint tenants in respect of the suit premises. An Appeal was preferred by the Appellant against the said decree. The Appellate Court dismissed the Appeal by holding that the suit was not maintainable in view of availability of a remedy of revision. The Appellate Court also held that a leave to file the suit without issuing notice under section 80 of the Code of Civil Procedure, 1908 could not have been granted.

3. The learned Advocate for the Appellant stated that in a suit filed by the Appellant, a decree of eviction has been passed in respect of the suit premises against the brother of the third Respondent Haniffudin. In execution Application filed by the Petitioner, the

third Respondent herein obstructed. His contention was that the decree was nullity. The objection raised by the third Respondent was overruled by the executing Court and an obstructionist Application filed by the third Respondent was rejected by the executing Court. Being aggrieved by the order passed by the executing Court, the third Respondent preferred Writ Petition No.2963 of 2006 which was rejected by this Court by the order dated 06th October, 2006. A true copy of the said order has been placed on record.

4. The Advocate for the Appellant has also placed on record a possession receipt executed by the third Respondent's brother in execution proceedings which records that possession of the suit premises was handed over by the third Respondent's brother to the Appellant. The Advocate for the Appellant stated that in view of the agreement between the Appellant and the third Respondent's brother executed on 02nd November, 1992 the Respondent's brother has been put in possession of another accommodation. He has also placed on record an undertaking dated 10th January, 2007 filed by the third Respondent in execution of the decree obtained by the Appellant against the third Respondent's brother. In the said undertaking the third Respondent stated that he will not raise any objection to his brother handing over

possession of the suit premises to the Appellant and he will not create any third party interests in respect of the suit premises. The learned Advocate for the third Respondent has accepted that such undertaking was executed by the third Respondent. He has also accepted the fact that third Respondent's brother handed over possession of the suit premises to the Appellant in execution proceedings.

5. In view of the aforesaid subsequent events, it is obvious that now the third Respondent is not entitled to claim any right, title and interest of whatsoever nature in respect of the suit premises. Coming back to the present Second Appeal, the suit filed by the Appellant has been dismissed by the Appellate Court on the ground that the same as not maintainable. In view of the fact that now the Appellant has taken over possession of the suit premises and that the third Respondent is not entitled to claim any right, title and interest in respect of the suit premises, it is not necessary to entertain the Second Appeal and the same is accordingly disposed of.

JUDGE